

Manual for HUD staff to conduct an environmental review

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Chapter One

Introduction to HUD Environmental Rules and Procedures

The role of the CPD Representative in the HUD Field Office is critical to ensuring that all HUD/CPD assistance produces quality projects which better the lives of citizens by improving their daily living environment. The CPD Representative does this by enforcing the Federal environmental laws and rules. These laws and rules ensure that HUD, or its client governments, reflects upon the environmental impact of a proposed action and consults with all appropriate interests before committing to a project.

The process of considering the environmental impact is found in the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and CEQ regulations implementing NEPA (40 CFR 1500-1508), as implemented by HUD in 24 CFR Parts 50 and 58. Part 50 covers rules and procedures for HUD when doing an Environmental Assessment (EA) or preparing an Environmental Impact Statement (EIS). Part 58 covers rules for State, local, and Native American governments meeting the Federal NEPA responsibilities when acting for HUD in performing the assessments or preparing an EIS.

Other rules spell out the various laws and regulations which are limited to a specific category of the environment. Examples include historic preservation, clean air, flood management, etc. Most of these rules are promulgated by other Federal agencies.

Where legislation permits, HUD client governments assume the administrative responsibility for complying with Federal environmental laws and rules. There is a formal process for client governments to certify to HUD that they have addressed the legal requirements and to formally request a release of funds from HUD. The process is called the Request for Release of Funds (RROF). HUD Field Office staff, and the CPD Representative, play an important role in the RROF and certification requirements.

This training guide is designed for participants at the August 1998 HUD/CPD Orientation training in Leesburg, VA. Its design is to gather together all of the divergent laws, rules, and forms which a CPD Representative might need in order to perform his/her environment compliance responsibilities. It covers the components of the environmental review contained in HUD rules as well as the RROF. Its Appendices include all of the rules, forms and guides used by HUD and its client governments in complying with Federal environmental laws and rules.

Legislative Background

The National Environmental Policy Act of 1969 (NEPA) is the basic national charter for the protection of the environment. In addition to providing policies, goals, and tools for its administration, NEPA also established the Council on Environmental Quality (CEQ) as the principal agency responsible for its implementation. CEQ then developed general regulations that Federal agencies must follow in order to comply with NEPA's broader aims. In turn, many Federal agencies, including HUD, have since applied the goals and policies of NEPA to their own sets of agency-specific regulations. For HUD, these agency regulations are set forth in 24 CFR Part 50: Protection and Enhancement of Environmental Quality.

Under 24 CFR Part 50, HUD assumes responsibility for conducting environmental reviews for any HUD programs which may impact, or be impacted upon by, the environment. Although HUD is made responsible for environmental reviews under these regulations, statutory authority allows other qualified entities to assume this responsibility for certain programs. The rules governing reviews by qualified entities are found in 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities." Groups which may assume responsibility for

environmental reviews include State, local, and Native American units of general government. Such groups are referred to as the Responsible Entities (RE) for their designated projects. While the RE may also be the Recipient of HUD assistance, which is the group which will actually receive HUD funds for their program, they are not necessarily one and the same. For example, a Public Housing Authority may be the Recipient in charge of planning a HUD-assisted program but does not have the legal authority to conduct an environmental review, for which the responsibility would most likely fall to the local or State government of that particular housing authority as the Responsible Entity.

Whether performed by HUD directly or by a Responsible Entity, the environmental review must be conducted before any funds may be committed to a project. In addition, activities on the project are limited pending clearance of the environmental review. Due to the importance of the environmental review to HUD-assisted programs, this guidebook was designed to help those performing environmental reviews understand the relevant legislation and regulations as well as provide helpful hints to ensure the accuracy and promptness of environmental reviews.

Key Federal Regulations

There are several regulations which govern the process of environmental reviews in HUD-assisted programs. The following is a list of some of the key regulations, all of which are listed in full in Appendix A, which may be referred to in an environmental review.

24 CFR Part 50: Protection and Enhancement of Environmental Quality

24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

24 CFR Part 51: Environmental Criteria and Standards

24 CFR Part 55: Floodplain Management

36 CFR Part 800: Protection of Historic Properties

40 CFR Parts 1500-1508: Council on Environmental Quality Implementation of NEPA Procedural Provisions

7 CFR Part 658: Farmland Protection Policy Act

Certain activities are defined in Parts 50 and 58 as exempt from environmental review or not subject to NEPA and other environmental laws and authorities. (Other laws and authorities include historic preservation, clean air, floodplain management, etc.) Documentation of these exemptions and exclusions must be included in the project's file. (See Sec. 50.20 and 50.35(a) for the list of such categorical exclusions and Secs. 50.4, 58.5, and 58.6 for "other" laws and authorities.) Even though certain activities are defined as categorically excluded from NEPA, some of these still require compliance actions for their specific category of the environment, e.g. historic preservation, clean air, flood management, etc. (See Sec. 58.35)

Projects that are not exempt or categorically excluded require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) that considers a broad range of impacts in addition to compliance with the specific laws and authorities mentioned above. An Environmental Assessment concludes with either a finding of No Significant Impact (FONSI) or a Finding of Significant Impact (FOSI). In the latter case, the review would move on to preparation of a full EIS. However, most HUD projects do not require the preparation of an EIS.

HUD has provided guidance documents for Responsible Entities to document their review of categorically excluded activities and Environmental Assessments. These were published in 1986 in "Environmental Review Guide for Community Development Block Grant Programs". The Statutory Checklist was revised in 1997 to reflect changes in Secs. 58.5 and 58.6.

When HUD prepares the review, HUD Form 4128, "Environmental Assessment and Compliance Findings for the Related Laws" and the "Sample Field Notes Checklist" (Appendix C) are used to document the review.

State, local, or Native American governments have a requirement that does not apply to HUD. Once the environmental review is completed, the Responsible Entity (i.e., a State, local, or Native American government) must notify the public of its intent to request a release of funds from HUD for projects that are categorically excluded or that required an EA or EIS. These steps may be accomplished by using the following HUD forms and notices, which are provided in hardcopy in Appendix C. (See Chapter 3 for further explanation of the RROF process.)

Sample Notice of Intent to Request a Release of Funds (NOI/RROF)

Sample Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds (FONSI/NOIRROF)

HUD Form 7015.15: Request for Release of Funds and Certification

HUD Form 7015.16: Authority to Use Grant Funds

Programs under 24 CFR Part 50

This regulation applies to all HUD policy actions and all HUD project actions except those already specified under 24 CFR Part 58 Section 1 (see below).

Programs under 24 CFR Part 58

Programs subject to this part include:

Community Development Block Grant programs

Rental Rehabilitation Program and Housing Development Grant Program with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991

Grants to States and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program and its predecessors, Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance

HOME Investment Partnerships program

Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards and grants for lead-based paint hazard reduction

Public Housing Programs and Indian Housing Programs including assistance administered by a public housing agency or Indian housing authority under Title 1 of the Housing Act of 1937 and Section 8 project-based activities

Special Projects appropriated under an appropriation act for HUD

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans

Self-Help Homeownership Opportunity Program

Key Terms

Definition of Terms:

Activity: An action that a grantee or Recipient puts forth as part of an assisted project, regardless of whether its cost will be borne by HUD assistance or is an eligible expense under the HUD program.

Certifying Officer: The official who is authorized to sign and assume legal responsibility for the RROF and the environmental review Certification and has the legal capacity to act as "Responsible Federal Official" under NEPA.

Designation of RE: All of the actions that HUD takes to determine who will perform the environmental review.

Environmental Justice: In general, actions taken to ensure the rights of low-income and minority communities to clean and healthy environments and that no person or group of people endure a disproportionate share of the negative environmental impacts of a Federal program.

Extraordinary circumstances: A situation where an EA or EIS is not normally required, but due to unusual conditions, an EA or EIS is warranted. Examples of indicators are:
Actions that are unique or without precedent

Actions that are similar to those that normally require an EIS

Actions that are likely to alter existing HUD policy or HUD mandates

Actions that have the potential for a significant impact on the users of the facility

Project: An activity, or a group of related activities, designed by the Recipient to accomplish a specific objective.

Recipient: Means any of the following entities, when they are eligible Recipients or grantees under a HUD program: A State that does not distribute HUD assistance under the HUD program to a unit of general local government

Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau

Local governments

Indian tribes

Public Housing Programs and Public Housing Agencies

Indian Housing Programs

Any direct grantee of HUD for a special project

A non-profit organization

Release of funds: HUD issuance of a firm approval letter. See Request for Release of Funds.

Request for Release of Funds: Refers to a Recipient's request for a firm approval (RROF) letter. Executed through HUD Form 7015.15.

Responsible Entity (RE): The entity that assumes environmental responsibility for HUD under NEPA and executes the environmental review. Examples where the RE is not the Recipient include: For public housing agencies - the local government within which the project is located that exercises land use responsibility. If this is not feasible, the county is responsible. If this is also not feasible, the State is responsible for the review. If a local government, county or State decline, HUD performs the review.

Regarding Indian housing authorities in Alaska, the Alaska native's village in whose community the project is located. If this is not feasible, the local government, HUD, or the State will have to assume responsibility.

For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located assumes responsibility. If the project is located outside of a reservation, the Indian tribe that established the authority is obligated.

Tiering: The evaluation of an action or an activity at various points in the development process as a proposal or event becomes ready for an Environmental Assessment. (For example, a city-wide rehabilitation program might be reviewed to determine the relevant environmental considerations that would need to be examined when a particular property was identified.)

Unit density: A change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

Abbreviations:

CDBG: Community Development Block Grant

CEQ: Council on Environmental Quality

EA: Environmental Assessment

EIS: Environmental Impact Statement

EPA: Environmental Protection Agency

ERR: Environmental Review Record

FONSI: Finding of No Significant Impact

HUD: Department of Housing and Urban Development

NEPA: National Environmental Policy Act of 1969

NOI/EIS: Notice of Intent to Prepare an EIS

NOI/RROF: Notice of Intent to Request Release of Funds

ROD: Record of Decision

RROF: Request for Release of Funds

Chapter Two

Conducting an Environmental Assessment

This chapter describes each of the topical areas which must be analyzed by HUD staff in preparing an Environmental Assessment. It contains National Environmental Policy Act (NEPA) categories of general environmental conditions including land use and availability of community facilities and services. It also contains assessment categories dictated by specific laws and rules such as historic preservation, floodplain management, etc.

HUD regulations 24 CFR Part 50, "Protection and Enhancement of Environmental Quality", requires approving officials and their program staff to use HUD Form 4128 to document environmental review compliance. The "Sample Field Notes Checklist" (Appendix C) is a tool to systematically record conclusions about each category. The official assessment must then be recorded on HUD Form 4128 (Appendix C).

It is suggested that you become familiar with guides which focus on specific HUD programs such as Handbook 1390.2, "Environmental Assessment Guide for Housing Projects" (Appendix B).

Chapter Two: Site and Community Components

Land Use Compatibility

Generally the community's zoning land use controls, which carry out its Master Plan, are sufficient to ensure land use compatibility. However, the assessment should view surrounding land uses to make sure that nearby nuisances and hazards do not adversely

impact on the project. Similarly, the use of the project/site being assessed should be reviewed to ensure its use does not adversely affect surrounding areas.

A couple of obvious incompatible uses could include residential plans in the middle of a heavy industrial area or a housing project located next to a busy freeway without the appropriate noise mitigation measures.

Unique Natural Features

There are areas which need special attention such as unique geological features. The geological features may vary from one place to another and may include cliffs, waterfalls, or unusual rock formations and colors. Natural areas may include heavily wooded areas that might pose a fire hazard to some projects in the event of a forest fire.

There is not any Federal legislation which specifically protects unique natural features. If they are decidedly unique, they may qualify for historic preservation. Or they may already be dedicated to park and recreational uses. If rare fossils or petrified materials exist, it may be appropriate to consider preservation of the area by dedicating the unusual area to park and recreational use. Perhaps the terrain is so rugged that development becomes difficult. If the feature does indeed pose any type of hazard, it should be fenced as a mitigative measure.

Availability & Quality of Community and Neighborhood Services

As a part of conducting an Environmental Assessment, one must consider a number of community and neighborhood services as factors which could potentially affect the HUD-assisted project. Such services may include but are not limited to:

Schools

Parks and Recreation

Social Services

Health Care

Fire and Police Services

Commercial/Retail

Public Transportation

The need for these services will vary as to the type and size of a development and should be considered on a case by case basis. For instance, an overcrowded school system would have no impact upon a project for housing the elderly. However, housing for the elderly should be located close to shopping, social service centers and emergency health care facilities.

Another consideration is the fact that while HUD does not have any specific standards regarding the quality and availability of these services, there are likely to be local ordinances and policies administered by various public bodies. Therefore, it may be necessary to contact several local offices for information on the current status of community services as well as their potential to expand. For example, if a particular service is already deemed inadequate, then the impact of an additional development could become a significant problem for the site. Yet if a service is currently operating adequately but would need to be expanded in order to absorb the added needs of the project in question, its ability to do so should be evaluated as well.

Because of the variance in types of projects as well as site conditions, it is important that these items be addressed on an individual case basis and that the assessment documentation clearly indicate the sources from which information was gathered.

Presence of Natural Hazards

Other than those natural hazards which have specific regulations and rules governing their evaluation in the Environmental Assessment and which have already been discussed in the preceding sections, there are also natural hazards which should be considered although rules have not been specified by HUD regarding their effects on projects. While there may be several types of natural hazards that could pose problems for a given site, some of the more prevalent of these hazards are presented below.

Radon

Radon is an odorless, colorless and tasteless gas that occurs in nature, seeping up from the earth. Radon is a result of the natural breakdown, or radioactive decay, of uranium and is present in trace amounts in all soils and rocks. Radon's migration patterns are not yet fully understood but the construction characteristics of a project as well as the soil and the rock beneath it are important factors in the accumulation of indoor radon, which is harmful to humans. HUD has not established radon standards. However, the EPA has recommended a guideline of 4 pico/curies per liter of air for indoor radon (pico-curie = one-trillionth of a Curie or the equivalent of the decay of two radon atoms per minute in a liter of air). Additional information regarding the danger of radon may be obtained through contacting local EPA officials.

Subsidence

Subsidence causes a sinking or settlement of land areas which may result from various situations such as: the pumping of ground water from the earth, "drying out" of boggy or

water-laden soils, or underground mining. The settlement caused by subsidence is not consistent but is instead shaped like an inverted cone. It is helpful to note that the low point of this cone continually shifts over the span of several years. Finally, it is important to consider this natural hazard because it has the ability to impact a site by altering drainage patterns or even reversing the direction of the flow of drainage water.

Soil Stability

Different types of soil as well as erosion conditions may require particular foundations or engineered earthworks in order to ensure the stability of the project. The USDA Natural Resources Conservation Service publishes soil survey maps for each county or parish. The maps provide a description and the characteristics of each soil type and series along with a legend giving the maximum slope for each soil name. If these soil surveys are not available or questionable conditions warrant further analysis, another soil survey may be required.

Where land developments include building foundations over filled ground or in areas where ground is removed and could result in swelling of exposed subsoil, the project should be controlled with an engineered earthwork. Furthermore, the site of any proposed development on cut or fill which does not follow engineered soil specifications, prepared by a licensed soil engineer, should be rejected.

Finally, some consideration should be given to the erosion conditions of a particular site. Erosion may damage soil stability either because of extensive rainfall or wind. If these conditions apply to a development project, it may require further evaluation by a soil engineer or similar expert.

Surface Faults & Seismic Zones

Although surface faults and seismic zones tend to be particular to given areas, areas with this possibility may require a geological study to be performed. In cases where seismic activity is common, foundations should be engineered to withstand earthquake conditions. If needed, a Seismic Zone map of the continental United States is available in HUD Handbook 4930.3 (available on the Internet on the HUDClips Web Page under the Handbook section labeled "Housing").

Presence of Man-Made Hazards & Nuisances

Asbestos

Asbestos is a fibrous fireproof material which in the past has been used in numerous building products including insulation, exterior siding, roofing materials, plaster, and many others. Because of the extreme fineness of asbestos fibers, they can easily become airborne and hazardous to human health. Although the use of asbestos in building materials has been banned since 1978, any project involving the rehabilitation or demolition of a structure constructed before this date should consider asbestos as a

potential problem. If a project is known or likely to have asbestos, it is recommended that EPA and OSHA be contacted for guidance. (EPA published the National Emission Standards for Hazardous Air Pollutants for Asbestos at 40 CFR 61.141-158.)

Hazardous Dams

In 1982, the U.S. Army Corps of Engineers completed a study of the National Program Inspection of Non-Federal Dams to determine which dams may be unsafe. Many of those provided in this list are located on private property or are municipally-owned. There is a separate listing of this report for each state which may be obtained, along with additional information regarding the safety of a particular dam, from the Federal Emergency Management Agency (FEMA).

High Voltage Transmission Electrical Lines

While it is known that transmission lines have electromagnetic fields which are harmful to humans, it is not known at what level of electromagnetic radiation this hazard occurs. In addition, the towers supporting electrical lines have posed risks when people, especially children, have attempted to climb their steel frames. For these reasons, fencing of all towers near a HUD-assisted project should be required as well as ensuring that the project itself is a safe distance from the electrical lines.

Lead and Lead-Based Paint

Childhood lead poisoning causes reduced intelligence, low attention span, learning disabilities and many other adverse health effects. In adults, it can cause nerve damage and decrease reproductive ability. About 80% of all homes built before 1980 have some lead-based paint. Many of those homes have only small amounts of such paint, but, generally, the older the home, the greater the amount of lead-based paint. Lead-containing paint was completely banned from residential use in 1978.

The Residential Lead-Based Paint Hazard Reduction Act of 1992, known as "Title 10", set the current Federal focus for lead paint poisoning on "lead-based paint hazards," which are conditions that cause health effects from exposure to lead-contaminated dust or soil, or lead-based paint that has or can become deteriorated. Most intact lead-based paint is not a "hazard," although the paint's condition should be monitored and maintained to ensure that it does not become deteriorated. Soil may be contaminated by lead from nearby industries or waste disposal sites, paint removal from bridges or other steel structures, and from old fallout of leaded gasoline emissions. Approaches for testing paint for lead and evaluating lead-based paint hazards are described in the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (800-245-2691), in HUD's rules at 24 CFR Part 35 (under revision in 1998), from the National Lead Information Center (800-424-LEAD), and the HUD Office of Lead Hazard Control's website. The HUD Office of Lead Hazard Control has the departmental responsibility for lead hazard abatement.

Additional lead health risks can come from lead in drinking water; the EPA's Lead-and-Copper Drinking Water Rule (40 CFR 141) requires publicly-owned treatment works to test water on a community-wide basis (not at each home) and take action when lead levels exceed specified amounts. In some urban areas, lead levels in air exceed EPA's National Ambient Air Quality Standards (40 CFR 50) and governments have to respond. (OSHA published its Lead in Construction Rule at 29 CFR 1926.62.)

Odors

Although HUD has no standard for odor, some offices have adopted a policy that projects should not be approved within 300 feet of a sewage treatment plant. Although odor may be an obnoxious nuisance, proposed projects may still be in the vicinity of sewage treatment plants, industrial facilities such as refineries or paper mills, and other industrial plants.

Open Drainage Ditches

To provide the necessary drainage to an area, subdivisions are designed where residential properties back up to open drainage ditches. In periods of heavy rainfall, the ditches can carry water with a depth of 10 to 12 feet. Because there is disagreement as to whether these ditches should be fenced or not, such an option should be considered on a case by case basis according to factors such as rainfall averages and project design.

Chapter Two: Compliance Components

Historic Preservation

The regulations concerning compliance with Section 106 of the National Historic Preservation Act of 1966 were issued by the Advisory Council on Historic Preservation as 36 CFR Part 800 (Appendix A).

Please note Section 800.5 which places the responsibility upon HUD to apply the Criteria of Effect that may be affected. The person preparing the assessment should check the National Register of Historic Places to determine if the project is among or near any listed properties on the National Register. We are not only concerned with properties on the site, but must also take into consideration any listed property that may be in the general vicinity of the project site.

The Environmental Officer in each local HUD office should have a current listing of properties already on the National Register. These may also be accessed through the National Register. The current listing also includes all properties that have been nominated to the National Register.

In addition, it is necessary to consult the State Historic Preservation Officer (SHPO) as you must not only be concerned with properties that are listed on the National Register, but also be concerned with those properties that might be eligible for listing. The SHPO

has thirty days in which to respond. An additional five days is allowed for mail time. If the SHPO concurs in the finding of no effect, no further action in this process is required.

If there are historic properties involved, and if HUD and the SHPO agree that there is no adverse effect, the procedure is the same, but the Advisory Council on Historic Properties (ACHP) should be given an opportunity to comment.

When an effect is considered adverse and if HUD and the SHPO can agree as to the mitigative measures to be taken, a Memorandum of Agreement (MOA) should be prepared. Again, the ACHP should be given the opportunity to comment. When forwarding materials to the ACHP for review, the documentation to be forwarded is set forth under Section 800.8. The ACHP also has 30 days from its receipt of a HUD request to respond.

Toxic Chemicals and Radioactive Materials

Particular attention should be given to any site proposed for HUD assistance that is located on, or in the general proximity of, such areas as dumps, landfills, industrial sites or other locations that contain hazardous wastes. It is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. The authority for programs covered by Part 50 is 24 CFR 50.3(i) and for programs covered by 24 CFR Part 58, the authority is HUD Notice 79-33. HUD environmental review of HOPWA programs and mortgage insurance for multifamily and nonresidential properties must include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely effected by the above hazards. Such an evaluation is called a Phase I (ASTM) report. HUD requires the use of current techniques by qualified professionals to undertake investigations determined necessary.

Floodplain Management

Whenever HUD financial assistance is proposed for a project within a floodplain, compliance is required with the 8-step decision making process of Executive Order 11988, "Floodplain Management", and implementing procedures contained in 24 CFR Part 55. The Executive Order sets floodplain management as a national priority and adds new prominence to the natural and beneficial floodplain functions as well as to the public benefit to be derived from their restoration or preservation. Federal programs are "to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." HUD policy strongly discourages the occupancy and modification of the floodplain wherever there is a practicable alternative for the project, in accordance with the Executive Order. Practicable alternatives to be evaluated prior to a decision to carry out a project in the floodplain include: (1) carrying out the proposed action at a location outside the floodplain (i.e., alternative sites); (2) other means which accomplish the same purpose as the proposed action (i.e., alternative actions); and (3) no action (i.e.,

disapproval of the site). The Executive Order does not apply to certain assisted activities as listed in 24 CFR 55.12(b) and (c).

"Floodplain" means the Special Flood Hazard Area (SFHA) identified on the flood maps published for the National Flood Insurance Program (NFIP) by the Federal Emergency Management Agency (FEMA). These maps should be referenced when inquiring whether a project is located within a floodplain. Flood maps are generally available for viewing in a community's land planning or building permit office. Flood maps are also available through contacting FEMA's Map Service Center by phone (800) 358-9616 or on the FEMA Map Service Center Web Page.

Mandatory Purchase of Flood Insurance

As a condition of funding approval, the property owner must purchase and maintain flood insurance whenever the owner's building is located within the Special Flood Hazard Area (SFHA) and is benefiting from Federal assistance or Federally regulated lending (Sec. 102(a) of the Federal Disaster Protection Act of 1972 as amended; hereafter the Act).

The use of Federal assistance is prohibited for a building located within the SFHA, unless the community in which the building is located, is participating in the National Flood Insurance Program (NFIP) (Sec. 202(a) of the Act). The NFIP is administered by the Federal Emergency Management Agency (FEMA) and is available only in communities that adopt and adequately enforce the requirements for floodproofing, elevating the construction of new buildings, or the substantial improvement of existing buildings located within the SFHA.

A "Flood Insurance Rate Map" (FIRM) published by FEMA must be used to determine whether a building is located within the SFHA and therefore subject to the flood insurance purchase requirements. Further information is contained in the FEMA publication entitled "Mandatory Purchase of Flood Insurance Guidelines." This publication is available on the FEMA website.

The "Community Status Book", also published by FEMA, must be used to determine the status of a community's participation in the NFIP. This information is also available on the FEMA website.

The Act prescribes the mandatory periods for flood insurance coverage, which vary according to the type of financial assistance. For a loan, loan insurance or guarantee, flood insurance coverage must be continued for the term of the loan. For other forms of financial assistance (including grant assistance), flood insurance coverage must be continued for the life of the property regardless of transfer of the property's ownership. The mandatory period for flood insurance coverage established by the Act may extend beyond a "closeout," i.e., when the Grant Recipient closes out its project of HUD assistance to the property owner or when HUD closes out the grant to the Recipient, or both.

Also, the Act prescribes the dollar amount of flood insurance coverage required. For a loan, loan insurance or guarantee, the amount of flood insurance coverage need not exceed the outstanding principal balance of the loan. For other forms of financial assistance (including grants), the amount of flood insurance coverage must be at least equal to the development or project cost (less estimated land cost) or to the maximum limit of coverage made available by the Act with respect to the particular type of building involved (SF = Single Family, OR = Other Residential, NR = Non-Residential, or SB = Small Business), whichever is less. The "development or project cost" is the total cost for acquiring, constructing, reconstructing, repairing, or improving the building. This cost covers both the Federally assisted and the non-Federally assisted portion of the cost, including any machinery, equipment, fixtures or furnishing. The total cost of such items must be covered by flood insurance.

Under HUD grant programs, the responsibilities of the property owner applying to a Recipient for HUD financial assistance which would benefit a building located in a SFHA are as follows. In those cases where the Grant Recipient has not established an escrow account for the purchase of flood insurance, the property owner's responsibility is threefold: (a) to purchase the requisite flood insurance coverage; (b) to renew the coverage so that the flood insurance policy does not lapse during the mandatory period; and (c) to give proof of purchase to the Grant Recipient office providing the Federal financial assistance. The property owner's responsibility should be set forth in the written contract or agreement between the owner and the Grant Recipient. The Standard Flood Insurance Policy issued by the NFIP or issued by any property insurance company offering coverage under the NFIP is acceptable. In completing the flood insurance application form, the property owner should indicate the name and address of the Grant Recipient office providing the financial assistance. Thereafter, the expiration and renewal notices for the insured will be forwarded automatically by the insurer to the Grant Recipient office in the same manner as forwarded to the insured. Should the community lose its eligibility for participation in the NFIP, flood insurance would no longer be available to residents in that community and the assisted property owner's responsibility to renew an existing flood insurance policy would automatically be terminated.

Important Note: Elevating the basement of buildings or otherwise floodproofing a building does not remove the legal obligation to purchase and maintain flood insurance, so long as the building remains located within the SFHA. Such precautions as floodproofing and/or elevating buildings are generally designed to reduce the potential of flooding damage to buildings, but do not eliminate potential flooding or economic loss caused by flooding. Floodproofing and/or elevating buildings may result in reduced flood insurance premiums that reflect the reduced risk exposure. Section 582 of the National Flood Insurance Reform Act of 1994 requires that no Federal disaster relief assistance may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property. This applies if that person at any time has received flood disaster assistance that was conditional on first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required on such property. The term "Federal disaster relief assistance" applies to HUD or other

Federal assistance for disaster relief in flood disaster areas. This prohibition applies only to where the new disaster relief assistance was given for a loss caused by flooding. The prohibition is to be included in grant agreements with Grant Recipients of flood disaster assistance.

Noise Hazards

The current noise regulation was published in the Federal Register on July 12, 1979, as 24 CFR Part 51 B, "Environmental Criteria and Standards: Noise Abatement and Control". A streamlined rule was published on March 26, 1996. An annotated copy of these regulations may be found in Chapter 2 of the Noise Guidebook.

When the Sample Field Notes Checklist is used to prepare HUD Form 4128 (Appendix C), if there is a yes answer to any of the noise questions, a noise analysis should be performed. For airports, use the noise contour maps to determine noise levels. The contour lines are expressed in DNL (day-night average) noise levels.

Although the noise requirements vary between existing and proposed construction, a noise assessment should always be conducted when the structures are existing on the site of the proposed action. Since noise attenuation can only be recommended on existing structures, the noise analysis should be completed in order to determine if noise attenuation should be recommended. If the analysis shows that the exterior noise level is in the unacceptable range, 65-75 db level noise, attenuation should be recommended.

It is very important to get accurate data to feed into the computer. Yet in the case of railways, it is sometimes difficult to obtain accurate information directly from railroad companies. Some individuals tend to exaggerate the number of trains, especially the number of trains at night, while other individuals may down-play the information in the fear that HUD, as a part of the government, is going to curtail their operations. It has been found that the dispatcher of the railroad usually has accurate information. In fact, most railways now have such information computerized and know exactly how many cars there are per train, the time of the train, etc. The dispatcher's office is usually located in the city from which the trains depart, however, this may be far removed from the site of the project.

If barriers are to be recommended for noise attenuation, it should be kept in mind that the barrier must intercept the line of sight of the noise source as well as the receiver. For example, a locomotive whistle or horn is usually 15 feet above the level of the tracks, and the exhaust pipe from a heavy diesel truck is usually 8 feet above the roadway. In order to be effective, barriers must be of earthen, masonry or similar permanent construction and be continued for the length of the site to protect the proposed residences.

Explosive and Fire Hazards

In 1984, the Department issued environmental hazard regulations for sites near above ground storage tanks containing flammable and explosive materials.

The regulations 24 CFR Part 51 C, "Environmental Criteria and Standards: Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature" are in Appendix A. Appendix B contains a corresponding guidebook, "Siting of HUD-Assisted Projects Near Hazardous Facilities", which implements the regulations.

The checklist, located in Appendix C with HUD Form 4128, asks the person making the site visit to determine if industrial facilities handling explosive or fire-prone materials are visible from the site. In actuality, the person making the site visit should conduct a visual survey of an area one mile in radius surrounding the site. If above ground storage tanks are observed, he/she should obtain the information required on Appendix C of the guidebook. If a container is within a dike, you must determine if the dimensions and design of the dike are adequate.

It is always necessary to compute the volume of the tanks in gallons. However, the contents of many oil tanks are expressed in barrels. One barrel equals 42 gallons at 60 degrees Fahrenheit. Remember that 7.4805 gallons makes up 1 cubic foot.

If storage tanks are observed, it will probably be necessary to inquire as to the contents of the tanks. If either hazardous liquids or gases are present, then HUD regulations are involved and it will be necessary to determine the Acceptable Separation Distance (ASD) from the tanks.

The ASD is determined by the use of the nomographs found as Worksheets numbered 1 through 4 of the guidebook. For Worksheet No. 3, thermal radiation always uses the upper line, the people line, rather than the lower line, the building line. The use of the people line is required by a memorandum of Assistant Secretary Barksdale dated July 26, 1984.

Wetlands Protection

Whenever HUD financial assistance is proposed for a project within a designated wetland, compliance is required with the 8-step decision making process of Executive Order 11990, "Protection of Wetlands". The Executive Order sets wetlands protection as a national priority. HUD policy strongly discourages the modification or destruction of designated wetlands in accordance with the Executive Order requirements.

The U.S. Fish and Wildlife Services (FWS), Department of the Interior, publishes the National Inventory of Wetlands. This official listing should be referenced when inquiring whether a project is located within a designated wetland. For map information, contact the FWS National Wetlands Inventory Center (phone (813) 570-5420 or the FWS website). GIS software (ArcInfo, MapInfo, etc.) may be necessary for retrieving digital maps, and a small percentage of wetlands have not yet been digitized.

Air Quality

The Environmental Protection Agency has established National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), ozone (O₃), and total suspended particulates (TSP).

On a county-wide basis, EPA classifies each contaminant as either being attainment, non-attainment, or unclassifiable. If a county is classified as non-attainment for one of the contaminants, the State agency having a State Implementation Plan (SIP) is responsible for moving the county into the attainment category. Regional planning bodies or Councils of Governments are often charged with the responsibility for a SIP in a particular area. Federal actions must be consistent with implementing the SIP.

If a project has a large number of dwelling units that might generate a high volume of vehicular traffic, it is possible that the carbon monoxide or ozone might exceed the NAAQS. Watch for large parking lots accommodating 1000 or more vehicles. Parking garages for a large number of cars may also present a problem. This is particularly true of underground parking facilities. Such facilities need a ventilation system to discharge the contaminants to the outside air where they may be dispersed.

Water Quality

Water quality is affected by waste water, which is simply another term for sewage. The terminology is not as important as the fact that pollution from waste water can harm the environment and become a health hazard.

Pollution of streams and bodies of water is covered by National Pollutant Discharge Elimination Systems (NPDES) permits, which are issued by EPA. (Information regarding existing NPDES permits can be accessed through the EPA website). EPA often delegates this responsibility to State agencies. When in doubt as to the impact a project may have on water pollution, it is wise to contact the State or local government office issuing NPDES permits.

The NPDES permits limit the kind and amount of pollutants that are to be discharged. One example of a NPDES permit recipient is a sewage treatment plant. These are designed for a certain capacity, but as growth takes place in urban areas, the plants may be exceeding their designed capacity. When the capacity is exceeded, it usually means that the effluent requirements are also exceeded.

Environmental Justice

Many communities are exposed to disproportionate health and environmental dangers because of their social, economic, or political position. The impacts of agency projects must take account of these disproportionate dangers and alleviate them when recognized. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations," establishes that the agency "shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." More information on environmental justice is in the Council on Environmental Quality publication, "Environmental Justice Guidance under the National Environmental Policy Act".

Protection of Endangered Species

Compliance is required with the Endangered Species Act (ESA) of 1973, as amended, whenever HUD financial assistance is proposed for a project that has the potential to affect endangered species or critical habitats. The list of endangered species is published by the Fish and Wildlife Services (FWS), Department of the Interior, and should be referenced when inquiring whether a proposed project has the potential to affect endangered species or critical habitats. Generally, the list is available by counties. For information, access the FWS Endangered Species website, or phone the nearest FWS office.

Section 7 of the ESA requires a formal process of consultation with the FWS for any project that is found to have the potential to affect endangered species or critical habitats. Section 7 consultation often requires a biological assessment: a technical review of the endangered species or critical habitat to be affected by the project proposed for HUD financial assistance. Generally, in central cities and urban areas, the presence of endangered species or critical habitats is rare but possible.

Protection of Farmlands

Whenever HUD financial assistance is proposed for a project that would contribute to the irreversible commitment of prime, unique, or State or local designated farmlands for non-agricultural uses, compliance is required with the Farmland Protection Policy Act of 1981 (as amended) and implementing regulations of the Natural Resources Conservation Service (NRCS), Department of Agriculture. For information, phone the State Office of Agriculture or access the website for the NRCS.

Generally, in HUD programs that provide financial assistance in rural and urbanizing communities, (for example, assistance for construction or replacement of water and sewer lines) the need to comply with protection of farmlands may occur.

Airport Clear Zones

HUD policies prevent building homes in areas where airplane crashes are greatest or most likely to occur. This is generally in areas near airport runways.

On January 6, 1984, HUD published 24 CFR Part 51 D entitled "Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Air Fields" (Appendix A).

For each major airport, an Airport Layout Plan has been prepared which has been approved by the Federal Aviation Administration. The Runway Clear Zones at Civil Airports are trapezoidal in shape and have a maximum length of 3,000 feet. These plans delineate the Clear Zones for each runway.

The Department of Defense requires that an Air Installation Compatible Use Zone (AICUZ) be prepared for each military airfield. The AICUZ for each airfield contains a noise contour map. Unlike the clear zones at civil airports, the clear zones on military airfields are rectangular in shape and are usually 7,000 feet in length. In addition to the clear zones, at the end of the runways of military airfields there are also Accident Potential Zones (APZ). The APZ is broken into two zones: APZ I and APZ II. The person preparing the Environmental Assessment for a proposed project should be guided by the land uses as outlined in each APZ and as is set forth in the AICUZ for the particular airfield involved. It should be kept in mind that the number and type of aircraft at one military airfield will vary a great deal from another airfield. The AICUZ for one military airfield will be decidedly different from that of another.

The regulations, 24 CFR Part 51 D, are not limited to new construction. The proposed action may involve an existing structure within a Runway Clear Zone. It is HUD's policy not to provide assistance which will extend the life expectancy of the structure. If the property is to be sold, it should first be offered to the airport operator.

The reason for this is that FAA provides funds to acquire properties within clear zones. If HUD assistance is provided to a property, the purchaser is required to sign a notice stating that he is aware that the property is located within a runway clear zone or a clear zone at a military airfield. The owner must acknowledge that he is also aware of the fact that the property may be acquired at a later date.

Chapter Three

Request for Release of Funds for Programs Subject to 24 CFR Part 58

For State, local and Native American governments assuming responsibility for administration of Federal environmental laws and rules, 24 CFR Part 58 establishes procedures for environmental review, public notification and submission to HUD of a Request for Release of Funds (RROF). Where references are made to HUD, this role may also be passed to the State when applicable. A RROF is required for all projects or activities that are categorically excluded, need an Environmental Assessment, or need an Environmental Impact Statement. The RROF process provides for the review and approval of the certification of compliance with Part 58 at the conclusion of the Responsible Entity's environmental review process and public notification process. Also, it allows time for public objections to HUD regarding the release of funds, due to

noncompliance with environmental laws and procedures. (Note: The reasons for objection are prescribed and noted in subpart H of 24 CFR Part 58.)

Once the Responsible Entity (RE) has completed the environmental review, made a finding regarding the project in question, documented its review of the environmental impacts, and allowed for public comment, the next step is to prepare the environmental certification. This certification is accomplished through submission of HUD Form 7015.15: "Request for Release of Funds and Certification." A copy of this form has been provided in Appendix C. In addition to certifying compliance with environmental laws, HUD Form 7015.15 also notes the assumption of environmental responsibilities by the RE and is considered a legally binding document. Completion of HUD Form 7015.15 involves the following: Prepare Certification: The Responsible Entity must complete Parts 1 and 2, of HUD Form 7015.15. In addition to attesting to the accuracy and thoroughness of the environmental review, this should include copies of all notices or provide evidence of posting and mailing procedures as well as start and end dates for the public comment periods. The RE's Certifying Officer must then sign the certification, effectively assuming responsibility for all environmental issues related to the project.

Attach Description of Mitigation or Special Instructions: The RE must include a description of any special environmental considerations or mitigation that needs to be addressed in the project. The Recipient of HUD assistance must agree to abide by the considerations and mitigation measures prescribed by the RE and signs Part 3 when the Recipient is not the Responsible Entity.

Send Certification to the Recipient: After completing Parts 1 and 2 of HUD Form 7015.15, the RE should then forward the form to the Recipient so that it may complete Part 3. Any documentation regarding special conditions or mitigation measures should be forwarded to the Recipient at this time. The Recipient then submits the RROF to HUD requesting the release of funds and agrees to advise the Responsible Entity of any proposed changes in the scope of the project or in the environmental conditions.

Recipient and Responsible Entity RROF Responsibilities

In the process of submitting certification of the environmental review and requesting the Release of Funds, the Recipient must fulfill these responsibilities:

Agree to adhere to any special conditions or mitigation measures that were established as a result of the environmental review and transmitted to the Recipient with HUD Form 7015.15.

Sign off on HUD Form 7015.15 and submit to HUD.

Notify the Responsible Entity (RE) of any proposed changes to the project or to site conditions before their initiation.

Continue to adhere to the restrictions or limitations set by HUD for activities and expenditures until completion and receipt of HUD Form 7015.16, Notice of Removal of Grant Conditions.

Upon completing the environmental review for a given project, the assumption of environmental responsibilities by the RE involves:

Completion of the Environmental Certification, of HUD Form 7015.15, which attests to the accuracy of the environmental review as well as provides publication dates of notices and a planned public comment period.

Transmittal to the Recipient, along with HUD Form 7015.15, of a description of any special environmental considerations or mitigating circumstances that must be addressed by the Recipient as a condition for the release of HUD funds.

After completing the aforementioned parts of HUD Form 7015.15, all portions of the form should then be forwarded to the Recipient so that they may complete the remaining parts before submission to HUD.

Any proposed changes to the project or site conditions must be assessed by the RE for the possibility of additional environmental impacts. In addition, the RE should continue to monitor the Recipient to ensure compliance with special considerations or mitigation that was previously set forth as an attachment to HUD Form 7015.15.

HUD Field Office RROF Responsibilities

Before HUD approves the Release of Funds, a public comment and objection period will be provided to allow individuals or agencies to question the performance of the review, adherence to applicable regulations, or the violation of any restrictions. The objection period should be planned and carried out according to the following stipulations: Plan Time Period for Public Objection: The start date for the objection period is determined by the date specified on the NOI/RROF notice. The objection period must last either 15 days

from HUD's receipt of the RROF and certification or 15 days from the date specified on the notice, whichever is later.

Inform the RE and the Recipient of Objection Procedures: Although the RE and the Recipient do not have any specific tasks during the period of objection, they should be notified of the procedures and criteria governing the objection process. Furthermore, the Recipient is still responsible for adherence to restrictions on activities during the objection period.

Conduct Objection Period: During the specified objection period, individuals or agencies may submit written objections to HUD which should include the following: name, address, and telephone number of the individual or agency submitting the objection; signature of the individual or authorized agency official; date of signature; description of the nature of their objection including relevant facts or legal authorities which support the objection; and the time and date when a copy of this objection was either delivered or mailed to the Certifying Officer of the RE. In examining objections, HUD may opt to release any documentation regarding the environmental review for public perusal.

After the expiration of the objection period, HUD is authorized to approve the RROF and Certification. In determining approval or disapproval, HUD may consider the validity of environmental review documentation, public comments or objections, and/or written findings from other Federal agencies which question the environmental quality of the project. The RROF may be disapproved if any of the following conditions apply: HUD has knowledge that the RE did not properly conduct the environmental review; HUD finds inaccuracies in the Certification or RROF; HUD receives valid public objections attesting to the inaccuracy or non-compliance of the Environmental Assessment. If there are no objections raised regarding the project or the Certification and RROF, then HUD may approve the Release of Funds. However, if HUD later learns of violations by either the Recipient or the RE of applicable statutes, HUD may impose sanctions to remedy the situation, including suspension or termination of the RE's environmental review responsibilities or additional HUD-sponsored training. Also, HUD must deny the release of funds if HUD has discovered that HUD or local funds were committed to the project prior to approval of the RROF. HUD is precluded from releasing funds if the project/activity has already started or non-HUD funds have been committed to a project that would have an adverse environmental impact and would limit the choice of reasonable alternatives.

The Release of Funds is the final step in the environmental review process. HUD approves the Certification and RROF, as submitted in HUD Form 7015.15, by executing a Notice of Removal of Grant Conditions through the use of HUD Form 7015.16. Completion of this form by HUD releases all funds allocated to the Recipient as soon as it is received. Finally, HUD Form 7015.16 allows the Recipient to commit HUD and local funds to the project/activity.

Appendices

Appendix A: Regulations

CEQ Regulations 40 CFR Parts 1500-1508: NEPA implementation regulations by the Council on Environmental Quality. Available on the website for the Code of Federal Regulations, National Archives and Records Administration.

24 CFR Part 50: Protection and Enhancement of Environmental Quality. Available on the Regulatory Compliance web page of the HUD Environment website.

24 CFR Part 51: Environmental Criteria and Standards. Available on the Regulatory Compliance web page of the HUD Environment website.

24 CFR Part 55: Floodplain Management. Available on the website for the Code of Federal Regulations, National Archives and Records Administration.

24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Available on the Regulatory Compliance web page of the HUD Environment website.

36 CFR Part 800: Protection of Historic and Cultural Properties. Available on the website for the Code of Federal Regulations, National Archives and Records Administration.

7 CFR Part 658: Farmland Protection Policy Act. Available on the website for the Code of Federal Regulations, National Archives and Records Administration.

Appendix B: Handbooks/Guidebooks

Environmental Assessment Guide for Housing Projects (Handbook 1390.2): This handbook may be found on the HUDClips website under the category titled "CPD Handbooks and Notices", listed as Document #66.

Environmental Review Guide for CDBG Programs ("Green Book"): Because this handbook is not yet available on the Internet, a copy may be obtained by contacting the Department of Housing and Urban Development Headquarters at the following:

Email: sammie_sneed@hud.gov

Phone: (202) 708-1201

Write to:

Office of Community Viability, Environmental Review Division

U.S. Department of Housing and Urban Development

451 Seventh Street SW

Washington, DC 20410

CDBG Monitoring Handbook (6509.2: Chapter 9 on Environment): This handbook may be found on the HUDClips website under the category titled "CPD Handbooks and Notices", listed as Document #161.

Environmental Policy for HOPWA Program (Handbook 1390.5): This handbook may be found on the HUDClips website under the category titled "CPD Handbooks and Notices", listed as Document #83.

Noise Guidebook: Because this guidebook is not yet available on the Internet, a copy may be obtained by contacting the Department of Housing and Urban Development Headquarters at the following:

Email: joel_segal@hud.gov

Phone: (202) 708-4225

Write to:

Joel Segal Office of Community Planning and Development
U.S. Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

Siting of HUD-Assisted Projects Near Hazardous Facilities Guidebook: Because this guidebook is not yet available on the Internet, a copy may be obtained by contacting the Department of Housing and Urban Development Headquarters at the following:

Email: john_hood@hud.gov

Phone: (202) 708-4225

Write to:

John Hood Office of Community Planning and Development
U.S. Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

Manufactured Housing under HOME Program (Notice CPD 94-17): Because this notice is not yet available on the Internet, a copy may be obtained by contacting the Department of Housing and Urban Development Headquarters at the following:

Email: sammie_sneed@hud.gov

Phone: (202) 708-1201

Write to:

Office of Community Viability, Environmental Review Division
U.S. Department of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

Environmental Guide for SHOP (Notice CPD 97-02): This notice may be found on the HUDClips website under the category titled "CPD Handbooks and Notices", listed as Document #336.

Appendix C: Forms

HUD Form 4128 (with Sample Field Notes Checklist): Environmental Assessment & Compliance Findings for the Related Laws.

HUD Form 7015.15: Request for Release of Funds and Certification. Available on the Technical Guidance & Forms web page of the HUD Environment website.

HUD Form 7015.16: Authority to Use Grant Funds. Available on the Technical Guidance & Forms web page of the HUD Environment website.

Sample Notices for NOI/RROF and FONSI/NOIRROF: Sample Notice of Intent to Request Release of Funds; Sample Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds.

Sample Floodplain & Wetland Notices: Sample Notice for Early Public Review of a Proposal to Support Activity in the 100-Year Floodplain and Wetland; Sample Notice and Public Explanation of a Proposed Activity in the 100-Year Floodplain and Wetland.